

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

EQUITABLE GAS COMPANY,
A DIVISION OF EQUITABLE
RESOURCES, INC.

Employer

and

Case 6-UC-422

UNITED STEELWORKERS
OF AMERICA, AFL-CIO, CLC

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Virginia L. Scott, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.¹

Upon the entire record in this case,² the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 6, 2000.

² Both the Employer and International Brotherhood of Electrical Workers, Local Union 1956, AFL-CIO-CFL filed timely briefs in this matter which have been duly considered by the undersigned. The Petitioner did not file a brief.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. United Steelworkers of America, AFL-CIO, CLC (herein "USWA") and International Brotherhood of Electrical Workers, Local Union 1956, AFL-CIO-CFL (herein "IBEW")³ are labor organizations within the meaning of Section 2(5) of the Act.

USWA is the collective-bargaining representative of certain employees of Equitable Gas Company, a Division of Equitable Resources, Inc. (herein "Equitable" or "the Employer"). USWA was originally certified to represent these employees in about 1959 by the Pennsylvania Labor Relations Board. As described by the petition in this matter, the unit USWA currently represents consists of all distribution department⁴ employees working in Region A, Region A North Hills, Region B, Region B Waynesburg, Region B Gingerhill and the meter shop; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act. USWA has a collective-bargaining agreement with the Employer which is in effect from August 30, 1999 through April 15, 2003. Through the instant petition, USWA seeks to add approximately 14 employees of the Employer who, USWA asserts, engage in distribution work at the Employer's location in Apollo, Pennsylvania.

IBEW is also the collective-bargaining representative of certain employees of the Employer. IBEW was certified many years ago through petitions filed in Cases 6-RC-1145, 6-RC-1493, 6-RC-1494 and 6-RC-1506, to represent certain employees of the Employer, as described in the collective-bargaining agreement, including meter readers and office clerical employees. IBEW has a collective-bargaining agreement with the Employer which is in effect from November 28, 1998 through November 28, 2001. By its intervention in this matter, IBEW

³ At the hearing in this matter, IBEW made a motion to intervene based on a collective-bargaining agreement with the Employer. That motion was granted by the hearing officer.

⁴ Although the petition reads "all distribution employees", the Recognition Clause of the parties' current collective-bargaining agreement states that recognition is extended to USWA for "various Divisions of the Distribution Department in Pennsylvania" (underscoring added).

seeks to add employees of the Employer who engage in meter reading or clerical work at the Employer's location in Apollo, Pennsylvania.⁵

The Employer's Operation

The corporate structure of the Employer's business consists of a parent corporation, Equitable Resources Inc., and three subsidiaries, one of which is Equitable Utilities Company.⁶ Equitable Utilities Company is comprised of two subsidiaries, Equitable Gas Company and Equitrans.⁷ Equitable Gas Company, which is the Employer herein, provides natural gas to approximately 275,000 residential, industrial and commercial customers in Western Pennsylvania and West Virginia. The natural gas distributed by the Employer is pumped from gas wells through gathering systems. The gas is then compressed and sent through transmission lines. This part of the gas production process is not performed by employees of the Employer; it is performed by employees of Equitrans. The Employer's employees receive the natural gas at "city gate stations", which are regulating stations located throughout the Employer's geographic area. At the city gate stations, natural gas is received in a high pressure state and is reduced to a lower pressure to be distributed to the Employer's customers. Equitable Gas Company and Equitrans together employ approximately 891 employees.

Equitable Gas Company has several locations where both represented and unrepresented employees report. On the South Side in Pittsburgh, the Employer has approximately 142 employees represented by USWA and 37 employees represented by IBEW,

⁵ The Employer, through its subsidiary Equitrans, has a collective-bargaining agreement with Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE). The employees represented by PACE maintain production wells, transmission lines and gathering stations, and operate the compression stations. PACE did not intervene in the instant matter.

⁶ The other two subsidiaries are Equitable Production Company and Equitable Service Company. Equitable Utilities is the only subsidiary involved in the instant matter.

⁷ As described above, Equitable Gas has collective-bargaining agreements with USWA and with IBEW, and Equitrans has a collective-bargaining agreement with PACE.

as well as 34 non-union employees.⁸ At its McKeesport, Pennsylvania, location, the Employer has approximately 76 employees represented by USWA and 16 non-union employees. The Employer's facility at Gingerhill, located near Monongahela, Pennsylvania, employs approximately 24 employees represented by USWA and one non-union employee. In Waynesburg, Pennsylvania, the Employer employs approximately 7 employees represented by USWA, and Equitrans employs approximately 19 employees represented by PACE. In addition, there are approximately 29 non-union employees located there. At Clarksburg, West Virginia, the Employer employs approximately 22 employees represented by IBEW, and Equitrans employs approximately 8 employees represented by PACE. There are also approximately 36 non-union employees working there. Equitrans also has employees at the following locations: Crooked Creek, Pennsylvania – eight PACE-represented employees and three non-union employees; Denniston, Pennsylvania – eight PACE-represented employees and five non-union employees; Mannington, West Virginia – eight non-union employees; Weston, West Virginia – eight PACE-represented employees and two non-union employees; and Tollgate, West Virginia – 11 non-union employees.

The employees represented by USWA perform distribution work, which occasionally involves performing leak surveys and PA1 calls⁹ and responding to emergency gas leaks. They perform maintenance and repairs on approximately 3500 miles of distribution lines. The employees represented by USWA do some leak repairs, install meters, renew meters, perform corrosion work, and perform big meter and regulator work. The Employer also has some USWA-represented employees assigned to crews which perform work to check and maintain lines on bridges. The employees represented by USWA do no work on the gas wells, gathering stations or compression stations, and only rarely do transmission work when an emergency

⁸ The non-union employees are generally either technical employees or management employees.

⁹ The record does not describe the nature of a PA1 call.

arises. The above-described job duties performed by the USWA-represented employees are collectively referred to as distribution work. These employees are supervised by individuals located at the locations at which they are assigned.

On December 15, 1999, Equitable Resources Inc. acquired Carnegie Natural Gas Company (herein “Carnegie”), which was a gas transmission company located in the same operating area as Equitrans and the Employer. Carnegie had been owned by Marathon, which was part of USX Corporation. At the time it was acquired, Carnegie had facilities in Leechburg, Pennsylvania;¹⁰ Homestead, Pennsylvania; Waynesburg, Pennsylvania; Tollgate, West Virginia; and Mannington, West Virginia. Its headquarters was also located in Homestead, Pennsylvania. Following the acquisition, Equitable Utilities decided to close the locations in Waynesburg and Homestead, including Carnegie’s headquarters there. Carnegie employed approximately 170 employees at the time of the acquisition.

At the Apollo location, Carnegie employed approximately 46 employees in December 1999. Equitable Utilities made plans to reduce the number of employees at that location. It entered into bargaining with both PACE and USWA to determine if some of the employees at the Apollo location could move into job openings within the USWA and/or the PACE-represented bargaining units. On January 14, 2000, USWA and Equitable Utilities entered into a Memorandum of Understanding, whereby 11 former Carnegie employees from the Apollo location would transfer into USWA bargaining unit jobs.¹¹ A similar Memorandum of Understanding was signed on January 27, 2000 with PACE, which covered approximately 10 employees from Apollo.¹² At these negotiations, Equitable Utilities was represented by Edward

¹⁰ This location is also referred to as the Apollo location (herein “Apollo”).

¹¹ At least one of these employees, Robert Shaffer, chose not to transfer and is still employed at Apollo. Two other employees covered by this Memorandum resigned because of difficulties with travel.

¹² No employees from Apollo were transferred into jobs within the IBEW bargaining unit. Thus, there were no discussions held between Equitable Utilities and IBEW regarding the Apollo employees.

Nolan, Senior Vice President of utility operations. During the discussions regarding Apollo, Nolan stated to the union that Apollo would remain, with fewer employees, as a “stand alone” operation. The concept of accreting the remaining employees from Apollo was never raised at these negotiations.

The Apollo employees who were offered transfers were relocated to various Equitable Gas and/or Equitrans locations. Approximately 14 of the employees who remained at Apollo are the subject of the instant unit clarification petition. At issue are 14 employees classified as repairmen. In addition, one station operator, three plant operators and one office administrator are based at the Apollo location. Bob Jackson is the manager of the Apollo facility and is responsible for supervising all of the employees except for the operators, who actually perform their work at the Shoemaker station. The three operators at Shoemaker are supervised by John Beatty, the station operator. The Apollo facility services approximately 2,598 customers, and maintains 513 gas wells, 31 miles of distribution lines, 91 miles of transmission lines and 626 miles of gathering lines.¹³

The station operator and the three plant operators work at the Shoemaker station, a compression station located approximately five to seven miles from the Apollo location. This station operates 24 hours per day, seven days per week, and contains several compressors and engines. At the Shoemaker station, the gas is pulled from the gathering system, compressed to a higher pressure, and moved into the transmission system. The four employees assigned to this station perform maintenance on the equipment, including tearing down and rebuilding engines, changing oil and occasionally handling emergency calls which come during the night.

¹³ As described previously, the gathering lines move the natural gas from the wells to the compression stations. At the compression stations, the gas is compressed into higher pressure and volume, after which it is sent through the transmission lines to the city gate stations, located throughout the area. At the city gate stations, the natural gas is reduced in pressure and volume and sent through the distribution lines to the individual customers. The employees in the U.S. Water Workers and Employees (U.S. Water) bargaining unit perform job duties almost exclusively related to the distribution lines.

If there is an emergency call at night, these operators might be sent out to make a repair for a customer.

The repairmen who work at Apollo are primarily responsible for maintaining the gas wells. Their job duties include blowing drips,¹⁴ changing charts, bailing water from gas wells, walking the gathering lines, doing leak surveys, doing corrosion work, mowing the grass on the right-of-ways, installing main lines or service lines, listening to customer complaints and responding to customer calls. The repairmen spend approximately one percent of their time performing work on the distribution system, and the remainder of their time performing work on the process from the gas wells to the city gate stations. There is also a supervisor, Jack Swaggert, as well as manager Bob Jackson, located at the Apollo facility. Additionally, Denise Heavner is the office administrator at Apollo.¹⁵

The Appropriate Unit

As stated above, USWA filed the instant petition requesting that the unit be clarified to include the 14 repairmen who are part of the approximately 20 former Carnegie employees reporting to the Employer's facility in Apollo. The Union contends that these 14 employees do essentially the same work as the bargaining unit employees; therefore, they share a strong community of interest with the bargaining unit employees so as to require their inclusion as an accretion to the existing bargaining unit. To the contrary, the Employer argues that the work performed by these 14 repairmen is different from that performed by the bargaining unit and that they do not share an overwhelming community of interest with the bargaining unit employees such that they should appropriately be accreted into the existing unit. A similar position is taken by IBEW regarding some of the same employees. IBEW contends that there may be one

¹⁴ Blowing drips is a method by which accumulated water is removed from the gas wells by blowing the water rather than bailing it.

¹⁵ The record does not reflect the job duties of the office administrator.

employee at the Apollo location performing clerical work¹⁶ and one employee there performing meter reading;¹⁷ and, if so, those two employees should be included in the bargaining unit represented by IBEW. The Employer's position with regard to IBEW's assertion is the same as its position regarding USWA's assertions.

The Board has repeatedly followed a restrictive policy with regard to accretions to existing units because the employees who are accreted to an existing unit are not afforded the opportunity to vote in an election to choose their bargaining representative. Compact Video Services, Inc., 284 NLRB 117, 119 (1987); Super Valu Stores, Inc., 283 NLRB 134, 136 (1987). Thus, the Board will find an accretion "...only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." Compact Video Services, Inc., supra, quoting Safeway Stores, 256 NLRB 918 (1981).

The Board has identified certain factors relevant to finding whether or not a community-of-interest exists sufficient to support an accretion. These factors include interchange of employees; day-to-day supervision of employees; similarity of terms and conditions of employment; similarity of skills and functions; physical, functional and administrative integration; and bargaining history. Compact Video Services, Inc., supra, and cases cited therein. Further, the Board has stated that two of these factors, the degree of interchange of employees and whether the day-to-day supervision of the employees is the same in the group sought to be accreted, are critical to the finding of an accretion. Towne Ford Sales and Town Imports, 270 NLRB 311, 312 (1984) and cases cited therein.

¹⁶ This contention appears to relate to the office administrator, Denise Heavner.

¹⁷ There was no evidence presented at the hearing to identify which, if any, of the Apollo employees perform meter reading duties.

Applying a community-of-interest analysis to the instant case, it is clear that there is insufficient evidence to warrant the accretion of the Apollo repairmen into the USWA-represented bargaining unit. With regard to the two particularly significant factors in an analysis of community-of-interest, the day-to-day supervision of employees and the degree of interchange, the record herein does not support a finding of accretion. In this case, the day-to-day supervision at the Apollo location is carried out by Swaggert and Jackson. Swaggert and Jackson have no responsibility for the supervision of any employees other than those at the Apollo location. The distribution employees at the Employer's other locations have supervisors at each of those locations, and have no relationship with Swaggert and Jackson; nor do the Apollo repairmen ever have contact with the USWA-represented employees' supervisors. Thus, the employees represented by USWA have completely different day-to-day supervision from the employees who are the subject of the instant UC petition.

Likewise, with regard to interchange, there is no evidence that the Apollo employees and the USWA-represented employees ever have any regular interchange. Aside from the transfers pursuant to the Memorandum of Understanding signed in January 2000, there have been no further transfers between these two groups of employees. There have never been any transfers, either permanent or temporary, of USWA-represented employees to the Apollo location. Moreover, the record reflects that there is no day-to-day contact or work-related interchange between these groups of employees. Consequently, there has been no significant interchange between the Apollo employees and the USWA-represented employees.

The terms and conditions of employment are also different between these two groups. The USWA-represented employees are paid hourly, and their wage rate is determined by the collective-bargaining agreement following negotiation. The Apollo employees are salaried and their salary is based on market surveys and performance reviews. Further, many of the benefits given by the Employer to the two groups are different. The Apollo employees have different short and long term disability insurance, disability benefits, life insurance, pension, and 401(k)

plans than are offered to USWA-represented employees. Also, the employees represented by USWA are not offered such benefits as travel accident insurance and severance payouts, while the Apollo employees are offered these benefits. Thus, the two groups have different terms and conditions of employment.

With regard to their skills and functions, the two groups are also different from each other. The employees represented by USWA only work on the distribution system. They deal with the gas delivery process after the gas reaches the city gate stations. The Apollo employees, on the other hand, deal with the entire process, from the gas wells to the individual customer. While the Apollo employees do perform some of the same work as the USWA-represented employees, the record reflects that this work takes only one percent of their time. The other ninety-nine percent of the time, the Apollo employees perform work related to the maintenance of the gas wells and the gathering system. Thus, unlike the USWA-represented employees, the Apollo employees are not limited to only distribution work; this type of work is a very small part of their job duties.¹⁸ Therefore, the skills and functions of the two groups are significantly different.

As previously described, the physical location of the two groups is different. The Apollo employees never have contact with the employees represented by USWA. The only exception might be if, occasionally, an Apollo employee makes a trip to the Employer's storeroom on the South Side of Pittsburgh, where a part that is not in the storeroom in Apollo might be picked up. In these circumstances, the Apollo employee might be in the same vicinity as employees represented by USWA, but there is no record evidence that they would have any reason to interact with each other. The USWA-represented employees have no occasion to come to the

¹⁸ In addition, one of the repairmen, Thomas Desiderio, spends about half of his time performing marketing duties, and two repairmen, James Kellner and John Fabry, perform work primarily considered technical measurement, wherein they measure various properties of incoming gas and make operating adjustments in accordance with their measurements. There is no indication in the record that any similar duties are performed by USWA-represented employees.

Apollo location. As noted, the two groups have separate supervision, and do not interact with one another in the performance of their job functions. Consequently, there is no evidence of physical, functional or administrative integration between the two groups.

Finally, the history of bargaining does not indicate a basis to accrete the Apollo employees. The Apollo employees have never been represented by any labor organization, while the USWA has represented its bargaining unit for many years.

In sum, based on the above and the record as a whole, I find that the Apollo repairmen do not share an overwhelming community of interest with the employees in the existing bargaining unit represented by USWA, nor do I find that the disputed employees have little or no separate identity, as required by the Board's accretion policy. Accordingly, I find that it would not be appropriate to clarify the existing bargaining unit of employees represented by USWA to include the repairmen who work at the Employer's Apollo location.¹⁹

As previously stated, IBEW intervened in the instant matter to request that two employees at the Employer's Apollo location be accreted into the IBEW-represented bargaining unit. IBEW asserts that one Apollo employee is a clerical employee, and one of the asserted

¹⁹ In John P. Scripps Newspaper Corp. d/b/a The Sun, 329 NLRB No. 74 (September 30, 1999), the Board discussed the standard to be used in unit clarification proceedings involving bargaining units defined by the work performed. The Board held that if the new employees perform job functions similar to those performed by the employees in the existing bargaining unit, the Board would presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. *Id.* at 6.

In the instant case, as previously noted, the current bargaining unit is described by department, and limited to specific locations. At the hearing, however, the parties referred to the USWA bargaining unit by the work performed, i.e., distribution work. Inasmuch as a unit clarification must relate to the existing bargaining unit, I find that it would not be appropriate to analyze the instant case in accordance with the standards set forth in The Sun, *supra*.

Even if, *arguendo*, the analysis set forth in The Sun were to be applied to the instant case, I note that the distribution work performed by the Apollo repairmen comprises only one percent of their functions. The vast majority of the repairmen's time is spent performing duties which are not performed by the employees represented by USWA. Thus, since distribution work is an insignificant part of the work performed by the Apollo repairmen, I find that the presumption set forth in The Sun would not apply. Moreover, the Board in that case specifically noted that the scope of the bargaining unit in that matter was one agreed upon by the parties, rather than one imposed by the Board. *Id.* at 7. In this case, I note that, as reflected in USWA's petition herein, clarifying the existing unit in the manner requested by USWA would require an expansion of the scope of the unit to include the Apollo location.

distribution employees does meter reading.²⁰ IBEW contends that this is work performed by the employees it represents and thus those two Apollo employees should be included in the IBEW-represented bargaining unit.²¹ However, IBEW failed to provide any specific information regarding any employees it represents who perform either clerical or meter reading functions. Consequently, assuming that these issues raised by the Intervenor are properly before me, I find that the record is insufficient to warrant a finding that there are any employees at the Apollo location who should be appropriately accreted into the IBEW-represented bargaining unit.

Accordingly, based on the above and the record as a whole, I find that there are no employees of the Employer located at the Employer's Apollo location who should appropriately be accreted into either the USWA or the IBEW bargaining units, and I shall, therefore, dismiss the petition in the instant case.

²⁰ At the hearing, IBEW president Dennis Mosco asserted that IBEW was requesting to include in its bargaining unit any Apollo employees who perform meter reading as part of their job functions. However, in its brief, rather than requesting to include such individuals in its bargaining unit, IBEW appears to assert that the Employer should be assigning any meter reading functions in the area serviced by the Apollo location to IBEW's existing bargaining unit members. That issue cannot be resolved in a unit clarification proceeding.

²¹ In its brief, IBEW also raises an issue concerning an employee IBEW asserts is performing PUC mediation work and is based at the Employer's location at Allegheny Center in Pittsburgh, Pennsylvania. Inasmuch as there was no evidence presented at the hearing concerning this individual, nor did the petition filed by USWA in this matter implicate the Employer's Allegheny Center facility, this issue is not properly presented for determination herein.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

Dated at Pittsburgh, Pennsylvania this 22nd day of November 2000.

/s/ Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

385-7533-4020